Econ Properties Pte Ltd v National University of Singapore

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 918 OF 1989
CHAN SEK KEONG J
28 MARCH 1990

Land Law — Sale and purchase of land — Payment of arrears of property tax — Whether vendor or purchaser liable — Law Society Conditions of Sale 1981 — Conflicting with conditions of tender

This was a claim by the plaintiffs as purchasers against the defendants as vendors for the sum of money being the apportioned property tax on the property sold by the defendants. The plaintiffs had submitted a tender for the purchase of the property subject to the conditions of tender and the Singapore Law Society Conditions of Sale 1981 ('the 1981 Conditions'). Condition 18 of the conditions of tender reads: 'All ... taxes ... which are due and outstanding as at the date of completion shall be met by the vendor and shall in any other case be met by the purchaser.' The plaintiffs' tender was accepted. After the sale was completed, the plaintiffs received a notice for the assessment of arrears of property tax on the property.

Held, dismissing the plaintiffs' claim:

(1) The words of condition 18 are clear. On the facts, there was no property tax due and payable in respect of the property at the date of completion.

(2) The property tax only became due on the date of authentication of the annual value and was never due on the date of completion.

[*Editorial Note*: The plaintiffs have appealed to the Court of Appeal vide Civil Appeal No 39 of 1990.]

Case referred to

1 *Kaolim Pte Ltd* v *United Overseas Land Ltd* [1983] 2 MLJ 1 (distd)

Tan Jing Quee for the plaintiffs.
Chelva Rajah for the defendants.

Cur Adv Vult

Chan Sek Keong J: This is a claim by the plaintiffs as purchasers against the defendants as vendors for the sum of $51,628.68 being the apportioned amount of property tax payable on the property known as lot 263-1 of mukim 26 ('the property').

On 6 July 1988, the plaintiffs submitted a tender for the purchase of the property belonging to the defendants at the price of $645,168 subject to the conditions of tender and the Singapore Law Society Conditions of Sale 1981 ('the 1981 Conditions'). On 3 August 1988, the plaintiffs were informed that their tender had been accepted by the defendants.

On 24 October 1988, the plaintiffs' solicitors received a reply from the Property Tax Department to their requisition as follows:

> New property has not been included in the Valuation List yet. Upon inclusion, tax be recovered under Sections 17(7)(b) and 19 of the Property Tax Act.

On 25 October 1988, the plaintiffs' solicitors wrote to the defendants' solicitors requesting confirmation that the defendants would pay any property tax chargeable to the property up to the date of completion should the property be subsequently included in the Valuation List. The defendants' solicitors immediately faxed a reply that the defendants' obligations were set out in condition 18 of the conditions of tender.

The sale and purchase was completed on 26 October 1988. Two months later, on 26 October 1988, the plaintiffs received from the Comptroller of Property Tax a notice under s 20(2) of the Property Tax Act assessing the annual value of the property at $32,300 and a further notice under s 22(1) claiming the sum of $45,543.00 being property tax in arrears for the period 1 January 1982 to 31 December 1987.

On 30 May 1989, the plaintiffs' solicitors wrote to the defendants' solicitors requesting payment of the apportioned sum of $51,628.82. The defendants denied liability.

The dispute between the parties turns on the meaning of condition 18 read with condition 16 of the conditions of tender. They provide as follows:

> 16 In the event of any conflict actual or apparent between the terms of these conditions of tender and the Singapore Law Society's Conditions of Sale 1981, the former shall be of overriding effect.
>
> 18 All impositions rates taxes assessments expenses and outgoings whatsoever relating to the property which are due and outstanding as at the date of completion shall be met by the vendor and shall in any other case be met by the purchaser.

Counsel for the plaintiffs relied on conditions 6 and 7 of the 1981 Conditions which read as follows:

> 6 The outgoings will be discharged by the vendor down to but excluding the date fixed for completion, as from which day all outgoings shall be discharged by and the rents and profits or possession shall belong to the purchaser, (such outgoings, rents and profits, if necessary, being apportioned) but the purchaser shall nevertheless not be let into actual possession or receipt of rents and profits until completion of the purchase, and the purchaser shall on completion pay to the vendor a due proportion of the current rents less the like proportion of the current outgoings.
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> 7 The vendor shall pay for all property tax (including surcharge thereon) down to but excluding the day fixed for completion, whether such tax shall have been levied or (as the case may be) increased before on or after completion and the vendor shall indemnify the purchaser in respect of the same. The provisions herein shall not merge in the conveyance/transfer by the vendor to the purchaser.

Counsel for the plaintiffs contended that upon a proper construction of these four conditions, in particular condi-

tion 7, the defendants were liable to pay for the arrears of property tax. Counsel relied on the decision of the Privy Council in *Kaolim Pte Ltd* v *United Overseas Land Ltd.*[1] In that case, the Privy Council held that the purchasers, the respondents, were not liable for arrears of property tax which was notified by the Comptroller after the respondents' tender was accepted in a mortgagees' sale. The sale was subject to a special condition 16 that 'The property is sold subject to ... all charges ... affecting the property made or served whether before on or after the date of sale'. The appellant contended that this special condition overrode condition 6 of the (Revised) Singapore Conditions of Sale (which corresponded to condition 6 of the 1981 Conditions). The Privy Council rejected the submission on the ground that reading the conditions as a whole, there was no inconsistency between special condition 16 and general condition 6 as the word 'charge' in the special condition could not be given such a wide meaning as to include an outgoing like property tax.

Counsel for the defendants contended that condition 18 of the conditions of tender conflicted with conditions 6 and 7 of the 1981 Conditions and that by virtue of condition 16, condition 18 must be given effect to. In essence, the submission was that condition 18 was inserted to ensure that the defendants would not be liable for property tax after completion unless it was due and outstanding on or before completion, whereas condition 7 provides for the opposite result. I agree with this submission. The words 'due and outstanding' in condition 18 are clear and unambiguous. On the facts, there was no property tax due and payable in respect of the property at the date of completion. Condition 18 would serve no purpose if it were construed, as contended by counsel for the plaintiffs, to have the same effect as condition 7 of the 1981 Conditions. The words 'shall in any other case be met by the purchaser' reinforce the object of this condition. *Kaolim*'s case[1] does not assist the plaintiffs in the construction of conditions 16 and 18.

Counsel for the plaintiffs also suggested that the retrospective order of the Comptroller of Property Tax made the property tax due and outstanding on the date of completion. I do not think that is the correct characterization of the Comptroller's action. His authentication of the annual value made the property tax payable on such date in respect of a period before that date. The property tax in question was never due and outstanding on the date of completion. It became due and payable on the date of authentication.

For the above reasons, I dismissed the plaintiffs' claim with costs.

Claim dismissed.

Solicitors: *Jing Quee Chin Joo & Teck Hui; Tan Rajah & Cheah.*

Reported by *Terence Tan Bian Chye*

City Development Ltd v Goh Yoke Hian & Ors

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 1090 OF 1987
CHAN SEK KEONG J
23 FEBRUARY 1990

Land Law — Charging order — Claim on property between equitable mortgagees and chargees — Whether interests of equitable mortgagees and chargees are conflicting — Whether s 41(1) of the Land Titles Act applicable — Whether charging order absolute defeasible by the bankruptcy of the judgment debtor — Land Titles Act (Cap 157, 1985 Ed), s 41(1)

Land Law — Caveats — Priority — Chargees lodged caveats during subsistence of equitable mortgagees' caveat — Equitable mortgagees' caveat lapsed and fresh caveat lodged — Whether equitable mortgagees' priority lost — Effect of s 40(1) of the Land Titles Act on lapsed caveat

The first defendant purchased a piece of property from the plaintiffs, and to finance the purchase the first defendant executed a deed of assignment in favour of the second defendants. The second defendants as equitable mortgagees lodged a caveat against the property. This caveat lapsed on 2 April 1986 and the second defendants lodged a fresh caveat on 3 September 1986. During the subsistance of the first caveat, the third defendants (claiming as chargee by virtue of a charging order) lodged a caveat on the property, and likewise the fourth defendants claiming as joint chargee. On 17 October 1986, the first defendant was adjudicated a bankrupt. The property was sold by the plaintiffs and the funds placed in a deposit account.

The senior assistant registrar held that the third and fourth defendants had priority over the claim of the second defendants in respect of the proceeds of the sale of the property by reason of s 41(1) of the Land Titles Act (Cap 157, 1985 Ed) ('LTA'). The second defendants had lost their priority in the fund to the third and fourth defendants when their first caveat lapsed on 3 April 1986, and the second defendants' second caveat was lodged after the caveats of the third and fourth defendants had been lodged. The second defendants were now appealing against the decision of the senior assistant registrar.

Counsel for the third and fourth defendants argued that: (i) the charging order had priority under s 41(1) of the LTA as the principle of nemo dat had no application; and (ii) the decision of the court in *United Overseas Finance Ltd* v *Mutu Jeras*[2] should not be followed as it did not take into account the effect of s 40 of the LTA.

Held, allowing the second defendants' appeal:

(1) The nemo dat principle had no application to cases where the property or interest in dispute is involuntarily acquired, as in execution proceedings.

(2) The first defendant had only an interest comprising an equity of redemption in the property as its rights, title and interest in the property had been assigned to the second defendants. The charging order could only have charged in favour of the third and fourth defendants what the first defendant had at the time the order was made (which was the first defendant's equity of redemption). The interest of the first defendant charged by the charging order was a limited interest, and did not impinge on the interest of the second defendants in the property. As such the interests of the parties were not conflicting interests and the question of priorities did not arise, and s 41(1) of the Land Titles Act had no application.